IN THE HIGH COURT OF JUSTICE OF THE
CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONUKALU, GODSPOWEREBAHOR&ORS.

COURT NO:

CR/158/2019

COURT NO: COURT 6

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA...............................COMPLAINANT

VS

1. **ENGINEER BABACHIR DAVID LAWAL**
2. **HAMIDU DAVID LAWAL**
3. **SULAIMANABUBAKAR**
4. **APEH JOHN MONDAY**
5. **RHOLAVISION ENGINEERING LTD**
6. **JOSMON TECHNOLOGIES LTD...............................DEFENDANTS**

R U L I N G/JUDGMENT

This Ruling is predicated upon No-Case-Submission filed by all the Defendants in a Charge against them.

The Defendants were arraigned before me on 30/11/2020 on a Ten Count Amended Charge dated 28/3/2019. For ease of reference the charge is hereby reproduced thus:

COUNT 1

That you Engineer Babachir David Lawal while being the Secretary to the Government of the Federation (SGF) and a Director of Rholavision Engineering Limited, Hamidu David Lawal being a Director of Rholavision Engineering Limited, SulaimanAbubakar being a staff of Rholavision Engineering Limited and Rholavision Engineering Limited on or about the 7th of March, 2015 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory did conspire to commit an offence to wit: fraudulent acquisition of property and thereby committed an offence contrary to Section 26(1) (c) of the Corrupt Practices and Other Related Offences Act, 2000 and punishable under Section 12 of the same Act.

COUNT 2

That you Engineer Babachir David Lawal while being the Secretary to the Government of the Federation (SGF) and a Director of Rholavision Engineering Limited, Hamidu David Lawal being a Director of Rholavision Engineering Limited, SulaimanAbubakar being a staff of Rholavision Engineering Limited and RholavisionEngineering Limited on or about the 7th of March, 2015 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory did knowingly hold indirectly a private interest in the consultancy contract awarded to Rholavision Engineering Limited for the removal of invasive plant species and simplified irrigation to the tune of ₦7,009,515.96 (Seven Million, Nine Thousand, Five Hundred and Fifteen Naira and Ninety Six Kobo only) by the Office of the Secretary to the Government of the Federation (OSGF) through the Presidential Initiative for the North East (PINE) and thereby committed an offence punishable under Section 12 of the Corrupt Practices and Other Related Offences Act, 2000.

COUNT 3

That you Engineer Babachir David Lawal while being the Secretary to the Government of the Federation (SGF) and a Director of Rholavision Engineering Limited, Hamidu David Lawal being a Director of Rholavision Engineering Limited, SulaimanAbubakar being a staff of Rholavision Engineering Limited and Rholavision Engineering Limited on or about the about August 2016 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory did knowingly hold indirectly a private interest in the consultancy contract awarded to Rholavision Engineering Limited for the removal of invasive plant species and simplified irrigation to the tune of ₦6,453,318.38 (Six Million, Four Hundred and Fifty Three Thousand, Three Hundred and Eighteen Naira and Ninety Six Kobo only) by the Office of the Secretary to the Government of the Federation (OSGF) through the Presidential Initiative for North East (PINE) and thereby committed an offence punishable under Section 12 of the Corrupt Practices and Other Related Offences Act, 2000.

COUNT 4

That you Hamidu David Lawal being a Director of Rholavision Engineering Limited, SulaimanAbubakar being a staff of Rholavision Engineering Limited and Rholavision Engineering Limited on or about February, 2016 at Abuja Judicial Division of the High Court of the Federal Capital Territory did abet the award of contract to Rholavision Engineering Limited for the removal of invasive plant species and simplified irrigation to the tune of ₦7,009,515.96 (Seven Million, Nine Thousand, Five Hundred and Fifteen Naira and Ninety Six Kobo only) by the Office of the Secretary to the Government of the

Federation (OSGF) through the Presidential Initiative for North East (PINE) and thereby committed an offence contrary to Section 26 (1) (c) of the Corrupt Practices and Other Related Offences Act, 2000 and punishable under Section 12 of the same Act.

COUNT 5

That you Hamidu David Lawal being a Director of Rholavision Engineering Limited and Rholavision Engineering Limited on or about the 2nd of August, 2016 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory did abet the award of contract to Rholavision Engineering Limited for the removal of invasive plant species and simplified irrigation to the tune of ₦6,453,318.38 (Six Million, Four Hundred and Fifty Three Thousand, Three Hundred and Eighteen Naira and Thirty Eight Kobo only) by the Office of the Secretary to the Government of the Federation (OSGF) through the Presidential Initiative for North East (PINE) and thereby committed an offence contrary to Section 26 (1) (c) of the Corrupt Practices and Other Related Offences Act, 2000 and punishable under Section 12 of the same Act.

COUNT 6

That you Engineer Babachir David Lawal while being the Secretary to the Government of the Federation (SGF), Hamidu David Lawal being a Director of Rholavision Engineering Limited, SulaimanAbubakar being a staff of Rholavision Engineering Limited, Apeh Monday John being the Managing Director of Josmon Technologies Limited, Rholavision Engineering Limited and Josmon Technologies on or about February, 2016 at Abuja in the

Abuja Judicial Division of the High Court of the Federal Capital Territory did conspire to commit an offence to wit: fraudulent acquisition of a private interest in contract awarded to Josmon Technologies Limited and thereby committed an offence contrary to Section 26 (1) (c) of the Corrupt Practices and Other Related Offences Act, 2000 and punishable under Section 12 of the same Act.

COUNT 7

That you Engineer Babachir David Lawal while being the Secretary to the Government of the Federation (SGF) and a Director of Rholavision Engineering Limited on or about the 4th of March, 2016 at Abuja, in the Abuja Judicial Division of the High Court of the Federal Capital Territory did knowingly hold indirectly a private interest in the contract awarded to Josmon Technologies Limited but executed by Rholavision Engineering Limited for the removal of invasive plan species and simplified irrigation to the tune of ₦272,524,356.02 (Two Hundred and Seventy Two Million, Five Hundred and Twenty Four Thousand, Three Hundred and Fifty Six Naira and Two Kobo only) by the Office of the Secretary to the Government of the Federation (OSGF) through the Presidential Initiative for North East (PINE) and thereby committed an offence punishable under Section 12 of the Corrupt Practices and Other Related Offences Act, 2000.

COUNT 8

That you Engineer Babachir David Lawal while being the Secretary to the Government of the Federation (SGF) and a Director of Rholavision Engineering Limited on or about the 22nd August, 2016 at Abuja in the

Abuja Judicial Division of the High Court of the Federal Capital Territory and knowingly hold indirectly a private interest in the contract awarded to Josmon Technologies Limited but executed by Rholavision Engineering Limited for the removal of invasive plant species and simplified irrigation to the tune of ₦258,132,735.00 (Two Hundred and Fifty Eight Million, One Hundred and Thirty Two Thousand, Seven Hundred and Thirty Five Naira only) by the Office of the Secretary to the Government of the Federation (OSGF) through the Presidential Initiative for North East (PINE) and thereby committed an offence punishable under Section 12 of the Corrupt Practices and Other Related Offences Act, 2000.

COUNT 9

That you Hamidu David Lawal being a Director of Rholavision Engineering Limited, SulaimanAbubakar being a staff of Rholavision Engineering Limited, Apeh Monday John being the Managing Director of Josmon Technologies Limited, Rholavision Engineering Limited and Josmon Technologies Limited on or about the 4th of March, 2016 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory did abet the holding indirectly or a private interest by Babachir David Lawal in the award of contract to Josmon Technologies Limited for the removal of invasive plant species and simplified irrigation by the Office of the Secretary to the Government of the Federation (OSGF) through the Presidential Initiative for North East (PINE) to the tune of ₦272,524,356.02 (Two Hundred and Seventy Two Million, Five Hundred and Twenty Four Thousand, Thee Hundred and Fifty Six Naira and Two Kobo only) which Rholavision Engineering Limited executed and thereby committed an

offence contrary to Section 26 (1) (c) of the Corrupt Practices and Other Related Offences Act, 2000 and punishable under Section 12 of the same Act.

COUNT 10

That you Hamidu David Lawal being a Director of Rholavision Engineering Limited, SulaimanAbubakar being a staff of Rholavision Engineering Limited, Apeh Monday John being the Managing Director of Josmon Technologies Limited, Rholavision Engineering Limited and Josmon Technologies Limited on or about the 22ndAugust, 2016 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory did abet the holding of a private interest by Babachir David Lawal in the award of contract to Josmon Technologies Limited for the removal of invasive plant species and simplified irrigation by the Office of the Secretary to the Government of the Federation (OSGF) through the Presidential Initiative for North East (PINE) to the tune of ₦258,132,735.00 (Two Hundred and Fifty Eight Million, One Hundred and Thirty Two Thousand, Seven Hundred and Thirty Five Naira only) which Rholavision Engineering Limited executed and thereby committed an offence contrary to Section 26 (1) (c) of the Corrupt Practices and Other Related Offences Act, 2000 and punishable under Section 32 of the same Act.

Upon plea all the Defendants pleaded not guilty on all the counts. The prosecution opened its case and called 4 witnesses and tendered various Exhibits. Upon the close of the prosecution's case, the Defendants instead of opening their defence elected to file No-Case-Submission.

The 1st Defendant's counsel filed and adopted a 27-pages Written Address on his No-Case-Submission wherein learned senior counsel submitted that it is trite law that for every offence charged in count, it is the duty of the prosecution to show by credible evidence that the Defendant in fact committed the offence charged. It therefore means that where any of the elements of the offence has not been proved by the prosecution after he has closed his case, the constitution is clear for the court to discharge and acquit the Defendant. Court is referred to Section 302 ACJA and the case of EMEDOVs STATE (2002) 15 NWLR (PT 789) 196 at 203 H – 204 AB.

It is further submitted that under Section 302 ACJA, this Honourable Court is under a duty to enter a finding of not guilty in respect of the Defendants on the premise that the evidence against the Defendants is not sufficient to justify the continuation of the trial. See the Court case of UBANATUVs COP (2000) 2 NWLR PT 643 Pg 115 at 117 – 119.

It is the submission of Learned Senior Counsel for the 1st Defendant that in order for the prosecution to establish a prima facie case which will give rise to grounds to proceed, the prosecution must establish through the evidence of the witness called the ingredients of the offences charged. See cases of SARAKIVsFRN (2018) 16 NWLR (PT1646) 405 at 4378; AJULUCHUKWUVs STATE (2014) 13 NWLR (PT 1425) 641 at 657 C- D.

It is the contention of the 1st Defendant's counsel that looking at the 7 counts charged against the 1st Defendant under Section 26 (1) (c) and 12 of the Corrupt Practices and Other Related Offences Act 2000, it is obvious that the prosecution has put into each count more elements than are

contained in the two Sections of the Act. There is therefore a duty on the prosecution to establish all the elements brought into each of the counts. See case of AGUMADU v THE QUEEN (1963) All NLR 379 AT 382; OFUANIVs NIGERIAN NAVY (2007) 8 NWLR PT 1037, 470 at 472.

It is the contention of the 1stDefendant's counsel that the prosecution failed to establish the ingredients of the offences charged in the six counts against the 1st Defendant.

With respect to Count 1, it is submitted that there is no such offence created by Section 12 of the Act cited in the count. The phrase "fraudulent acquisition of property" is only a marginal note which is not part of Section 12 of the Act. It is trite law that marginal notes do not form part of a statute and so cannot control the language used in a Section. See case of ATTORNEY GENERAL OF THE FEDERATION VsANPP (2003) 15 NWLR (PT 844) 600 at 653 to 654; UDOHVs OTHERS (1993) 17 NWLR (PT 304) 139.

It is further contended that the prosecution led no evidence that the 1st Defendant was a Public Officer at the material time; that a close reading of Section 12 of the Act states that only a public officer can commit the offence in the Section. Furthermore, the prosecution also failed to establish the alleged link among the 1st, 2nd and 3rd Defendants in Count 1. Court is urged to hold that the prosecution has failed to establish a prima facie case in Count 1 to justify calling on the 1st Defendant to enter his defence.

With respect to Count 2, it is the submission that there is no iota of evidence led to establish the allegation that the 1stDefendant knowingly held indirectly a private interest in the consultancy contract awarded to the

5th Defendant. Court is referred to the evidence of PW2 and PW4 under cross-examination. Also there was no evidence led by the prosecution to prove that the contract in Count 2 was awarded to the 5th Defendant by the Office of the Secretary to the Government of the Federation. Court is urged to hold that the prosecution also failed to prove the essential ingredients of Count 2.

With respect to Count 3, it is the submission that the prosecution failed to establish the ingredient of Count 3 which is very vital to the court; that the 1st Defendant knowingly held indirectly a private interest in the consultancy contract awarded to the 5th Defendant. Court is further referred to the evidence of PW2 in-chief and PW4 under cross-examination. Court is urged to uphold the No-Case-Submission.

With regard to Count 6, it is the submission of learned Silk to the 1st Defendant, that no evidence was led by the prosecution to show that at the relevant time alleged in this count i.e. February 2016, the 4th Defendant was Managing Director of the 6th Defendant. Learned counsel further adopted his argument under Count 1 in support of this argument and urged the court to hold that the prosecution also failed to prove the essential ingredients of Count 3 which should lead to the upholding of the No-Case-Submission in respect of this count.

With respect to Count 6, it is the submission of learned Silk for the 1st Defendant adopted his argument under Count 1 in urging that the prosecution has failed to establish the essential elements of Count 6 as can be gathered from a reading of Count 6 and Sections 26 (1) (c) and 12 of

the Corrupt Practices and Other Related Offences Act and urged the court to uphold the No-Case-Submission.

With respect to Counts 7 and 8, it is the submission that the prosecution failed to lead evidence to establish the ingredient that the 1st Defendant knowingly held indirectly a private interest in the contract awarded to the 6th Defendant. The evidence of PW4 under cross-examination was to the effect that neither himself nor the Ministerial Tenders Board was under pressure or fear from anybody to assist.

With regard to the allegation in the Count that the contract was awarded to the 6th Defendant by the Office of the Secretary to the Government of the Federation, the evidence on record from the witnesses runs counter to the allegation. Court is referred to the evidence of PW2 under cross-examination that PINE awarded the contract to the 6th Defendant. Court is also referred to the evidence of PW4, PW5, PW9, PW10 and PW11 under cross-examination where they all admitted that the 1st Defendant was not a member of PINE and the Ministerial Tenders Board. Court is urged to uphold the No-Case-Submission and discharge the Defendants accordingly.
The 2nd Defendant's Counsel S.I. Ameh, SAN filed a 48-Page written submission dated 25/8/2022 in support of his No-Case-Submission wherein the learned Silk distilled the following issues for determination:

1. **Whether having regard to the state of evidence in this charge the prosecution has established prima facie case against the 2nd Defendant to warrant calling on him to enter his defence.**

2. **If Issue One above is resolved by the Honourable Court in the negative and in favour of the 2nd Defendant, whether the 2nd Defendant should not be discharged and acquitted of the charges preferred against him in this case.**

On these issues, it is the submission of Learned Silk for the 2nd Defendant that from the generality of the evidence led by the prosecution in this case, it is clear that the prosecution has failed to make out any prima facie case of conspiracy and abetment against the 2nd Defendant to displace the presumption of innocence, and or to warrant calling on him to defend the charges against him. See the case of ZUBERUVs THE STATE (2010) 3 NWLR 356 at 361; OKORO v STATE (1988) 5 NWLR (PT 94) 255 at 277 – 278 Paras B- A.

In his submission with regards to Count 1 and 6 as it affects the 2nd Defendant, it is submitted that the prosecution failed to state the particulars of the property allegedly acquired in the charge or vide the evidence led. Court is urged to hold that Count one of the Charge is vague and ambiguous and same is liable to be struck out.

It is further submitted that from the evidence led by the prosecution, it did not prove any element of the offence of conspiracy to fraudulently acquire property for which the 2nd Defendant is charged with under Count 1of the charge; and or conspiracy to fraudulently acquire private interest in the award of contract to the 6thDefendant. Court is referred to the testimonies of all the prosecution witnesses and the case of AITUMAVs THE STATE (2007) All FWLR (PT 381) 1798.

It is submitted that to sustain the charge of conspiracy against the 2nd Defendant, the prosecution has the duty to establish by credible evidence that the 2nd Defendant conspired with the other Defendants to fraudulently acquire property and or private interest in the 5th Defendant contrary to Section 26 (1) (c) of the Act. On the contrary, the testimonies showed that the purported contracts and payments were made by PINE, and the 2nd Defendant is not one of the officers of PINE, or even had any hand in the award of the alleged contract. See FRNVsUSMAN&ANOR (2002) 3 S.C. (PT 1) 128 at 145 Paras 25.

It is the submission that from the totality of the evidence of the prosecution witnesses, it is clear that the prosecution failed to establish a prima facie case of conspiracy against the 2nd Defendant herein to acquire property or acquire interest in the award of contract to the 6th Defendant. Court is urged to so hold and discharge and acquit the 2nd Defendant.

On whether the prosecution established a prima facie case of abetting the award of contracts to Rholavision Engineering Limited - Count 4 and 5 against the 2nd Defendant, it is the submission that the prosecution has failed to establish a prima facie case of abetment against the 2nd Defendant. There is no iota of prove before the court demonstrating that the 2nd Defendant positively and unequivocally encouraged, incited, set on, instigated, promoted or procured the award of contracts he is charged with in Count 4 and 5 of the charge. See case of KAZAVs STATE (2008) 7 NWLR (PT 1085) P. 125.

Also there is no evidence before the Honourable Court to prove that the contracts allegedly awarded to the 6th Defendant for the removal of invasive plant species and simplifies rural irrigation to the tune of ₦7,009,515.96 and ₦6,453,318.38 in Count 4 and 5 of the charge respectively, were awarded to the 6th Defendant in consequence of the 2nd Defendant's acts of abetment in respect of the said awards. The prosecution also failed to prove that the contracts awarded to the 5th and 6th Defendants amount to commission of a crime to which it could be said anybody abetted. Court is urged to so hold.

It is the submission with respect to Counts 9and 10 that to prove the charge of abetting, the 1st Defendant to directly or indirectly hold private interests to the award of contract to the 5th Defendant against the 2nd Defendant, the prosecution is required to prove that the 2nd Defendant did encourage, incite, set-on, instigate, or promote the commission of the alleged offences, this the prosecution have failed to establish. Court is urged to so hold. In sum, it is submitted that no prima facie case has been made out against the 2nd Defendant to warrant him entering his defence. Court is urged to uphold the No-Case-Submission and discharge the 2nd Defendant.

The 3rd Defendant's counsel filed a Written Address on No-Case-Submission dated 4/7/2022 and filed on 04/08/22 wherein learned counsel formulated a sole issue for determination to wit:

"Whether the prosecution has made a prima facie case against the 3rd Defendant sufficient enough to warrant the 3rd Defendant to enter a defence in his charge"

On this lone issue, it is the submission that from the evidence adduced, the prosecution has not made a case against the 3rd Defendant sufficient enough to warrant the 3rd Defendant entering a defence to the allegations made against him.

It is submitted that a reading of Section 303 (3) of ACJA, 2015 reveals that where essential ingredients of an offence(s) has not been proved, taking into consideration specifically the ingredients of the offence for which the Defendants are being charged, this No-Case-Submission should be upheld and the Defendants discharged.

It is the submission that from the evidence record that there is no legally admissible evidence linking the 3rd Defendant with the commission of the offences with which he has been charged. The only futile attempt made to link the 3rd Defendant to the offences is the evidence of PW 8 but on cross-examination, it was proved that even though there were facts made available to the commission which required investigating, they did not conduct such investigation, like the status of the contract in Yobe through physical inspection or even interviewing or confirming the status of 1st Defendant in the 5th Defendant's company at the relevant time. As stated by PW 8, the 3rd Defendant is a staff of the 5th Defendant just like other member of staff of the 5th defendant; none of the evidence, before the

court, proving the existence of any conspiracy or abetment by the 3rd Defendant to require him entering defence.

It is the contention of 3rd Defendant's counsel that from the totality of evidence adduced by the prosecution, there is no reasonable evidence linking the 3rd Defendant with the offence alleged against him in the charge sheet.

In such a situation such as it evident in this a case, the law enjoins this court, even suomotu*,* without this application, rule that the 3rd Defendant has no case to answer and discharge and acquit him accordingly. Court is referred to Section 302 ACJA, 2015. Court is urged to uphold the No-Case-Submission for the 3rd Defendant and discharge him.

Learned Counsel for the 4th and 6th Defendants filed a 27-pages Written Address dated 6/7/2022 in support of his No-Case-Submission wherein counsel formulated a lone issue for determination, thus:

> **"Whether from the totality of the evidence before this Honourable Court, the prosecution has made out a prima facie case against the 4th and 6th Defendant upon which this Honourable Court ought to call on the Defendants to enter defence"**

On this singular issue, it is the submission that from the totality of evidence in this case, the 4th and 6th Defendants have no case to answer; that the essential elements of the offences for which the accused stands charged was not proved by the prosecution. See case of EKWUNUGOVsF.R.N.

(2008) 15 NWLR (PT 1111) 630 and Sections 286, 302; and 303 (3) (a – e) ACJA 2015.

It is submitted that by the Provision of Section 135 (1) and (2) of the Evidence Act 2011, the standard of proving criminal allegation, it must be Beyond Reasonable Doubt and it is the sole responsibility of the prosecution to prove such allegation on that standard. See cases of CHINELONSUKAVs THE STATE (2013) LPELR 21199 (CA), OSUAGWUVsSTATE (2016) LPELR – 40836 (SC).

It is further submitted that in establishing a prima facie case of conspiracy against the Defendants, the prosecution has a burden to show that the Defendants were at idem to do the alleged act or attain an unlawful gains through a legal means. See case of KINLOLUVs STATE (2017)LPELR – 42676 (SC) (PP 58 – 59 Paras D – A).

In the instant case, there is nothing before the court linking the 1st, 4th, 5th and 6th Defendants that is suggestive of any agreement, directly or indirectly to do any illegal act or a legal act as a means to illegal gain. From the totality of the evidence led by the prosecution through all the witnesses called that the prosecution has failed to prove any of the ingredients of conspiracy against the 4th and 6th Defendants. See ODUMVsCHIBUEZE (2016) All FWLR (PT 848) 714 at 742 – 743 Para E – C. Court is urged to uphold the No-Case-Submission and discharge and acquit the 4th and 6th Defendants.

The 5th Defendant's counsel filed a 24-page written address on No-Case-Submission dated 5/7/2022 wherein learned senior counsel formulated a lone issue for determination thus:

> **"Whether having regard to the totality of the evidence adduced by the prosecution before this Honourable Court, a prima facie case has been made against the 5th Defendant for the 5th Defendant (and indeed all the Defendants) to enter an exculpatory defence to this action"**

On this lone issue, it is the submission of Learned Silk that for the purpose of this No-Case-Submission, the 5th Defendant shall restrict herself to Counts 1, 4, 6, 9 and 10 which affects her directly as charged.

With respect to Count 1, it is the submission that the 1st Defendant as Secretary to the Government of the Federation does not fall under any of the categories stated in Section 318 (1) of the Constitution; accordingly Court is urged to dismiss or discountenance Counts 1, 2, 3, 6, 7, 8 and 10 of the extant charge.

It is further submitted that the prosecution throughout the evidence of PW1 – PW11 has failed to prove the essential ingredients or element of criminal conspiracy to fraudulently acquire property and abetment of fraudulent acquisition alleged in all the counts of the charge.

All that the prosecution has succeeded in proving through the evidence of PWs 2, 4, 5, 6, 7 and 11 is that the 5th Defendant followed due process

before she was awarded the consultancy contracts. Court is referred to the testimonies of the above witnesses particularly under cross-examination.

That the prosecution failed to prove that the 1st Defendant was a Director of the 5th Defendant at the time when he was the Secretary to the Government of the Federation and unless they prove that, the entire charge will grumble. Court is referred to Exhibit 12 (Statement of 1st Defendant to EFCC) which showed that the 1st Defendant at the time of his appointment resigned his directorship of the 5th Defendant.

It is submitted that from the evidence by the prosecution there was no evidence before the court that the 1st Defendant was a director of the 5th Defendant or had any pecuniary interest in the 5th Defendant at the time of the awards of the contracts to the 5th Defendant or any evidence of abetment or fraudulent acquisition of property. See case of PROF. BUKARBABADEVs FEDERAL REPUBLIC OF NIGERIA (2019) NWLR (PT 1652) 100 at 130 Paras A – D.

It is the submission that the prosecution has not put out a prima facie case against the 5th Defendant or any of the Defendants. To ask the Defendants to enter their defence would be tantamount to asking them to prove their innocence contrary to Section 36 (5) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended). Court is urged to discharge and acquit the Defendants.

In response to the No-Case-Submission, the prosecution's counsel filed a 56-page written address same is herein adopted as forming part of this Ruling.

In the said Written Address, the prosecution counsel formulated a lone issue for determination, thus:

> **"Whether from the evidence adduced at trial, a prima facie case has not been made out by the prosecution against the 1st, 2nd, 3rd, 4th, 5th and 6th Defendants requiring them to enter respective defences"**

On this sole issue, it is the submission of learned prosecution counsel that the prosecution has decided not to advance any argument opposing the No-Cases-Submission made in respect of Count 3 and 5 respectively. The prosecution counsel urged the Honourable Court to strike out the said counts in which the 1st, 2nd, 3rd and 5th Defendants are involved.

With respect to Count 2, it is the submission of the prosecution counsel, that the 1st Defendant is a person employed in the public service; that the testimonies of PW2, PW4, PW5, PW8, PW10 and PW11 all points to the fact that the 1st Defendant was engaged by the Federal Government of Nigeria in the capacity of SGF, a position he occupied in the public service of the Federal Republic of Nigeria. Court is referred to Sections 2 and 12 of the CPAOROA, 2000 and the case of SAMUEL VsFRN (2019) LPELR – 49367 (CA). Court is urged to hold that the 1st Defendant is a public officer in the public service.

It is the submission that by Exhibits 12^{1-5}, the 1st Defendant has admitted without any equivocation that apart from being involved in approving programmes PINE has to implement or initiate; he also participates in the procurement process by approving the report of the MTB sent to him.

It is further submitted that even if the contract to the 5th Defendant was awarded by a ministry or agency other than the Office of the SGF, which the 1st Defendant oversees and supervises, he would still be found culpable under Section 12 of ICPC Act if shown that he has interest in the 5th Defendant as has been demonstrated in the instant case. See FRNVsSHULUMA (2018) LPELR – 43895 (CA).

It is the submission that it is only a letter of resignation of the 1st Defendant to the 5th Defendant that would suffice to prove such resignation as proved under Section 258 (1) (e) of CAMA, 2004, and not whether he instructed his lawyers to effect his resignation.

It is further submitted that the private interest contemplated in Section 12 of the Act is about the 1st Defendant's link to the contract awarded to the 5th Defendant, a private company in which he was still a director and shareholder up to the time payments were made to the company. See case of FRNVsNAHJWAN (2021) LPELR – 56063 (CA). Court is urged to hold that the prosecution has concretely established the holding, indirectly of a private interest by the 1st Defendant in the contract awarded to the 5th Defendant. Court is urged to hold that a prima facie case has been established against the 1st Defendant to Count 1.

With respect to Count 7 and 8, it is the submission that the 1st Defendant is a person employed in the public service as canvassed in paragraphs 5.8 – 5.11 of the Prosecution's Written Address which formed part of this Ruling.

It is the contention that counsel to the 2nd Defendant was wrong to have submitted at paragraph 5.148 of his Written Address that Exhibits 10^{1-61} was dumped on the court by PW7 and should be discountenanced. It is submitted that the prosecution demonstrated Exhibit 10 through PW7and PW8 as captured in paragraphs 5.27, 5.45 and 5.48 of this submission linking it to the charge.

It is submitted that the 1st Defendant holds, indirectly a private interest in the contract allegedly awarded to the 6th Defendant,which indeed was executed by officials of the 5th Defendant. The prosecution has established that PINE was an Ad-Hoc intervention unit in the Office of the S.G.F., which the 1st Defendant supervised by formulating its policies and determining where it intervenes.

It is further submitted that the private interest contemplated in Section 12 of the Act is about the 1st Defendant's link to the contract allegedly awarded to the 6th Defendant which was executed by the 2nd and 3rd Defendants through their hireling, HusseiniDanjuma as a decoy to shield the 5th Defendant and its officers. Court is urged to hold that the prosecution has established a prima facie case against the Defendants with respect to Court 7 and 8 of the charge sheet.

With respect to Count 4 – Abetment, it is the submission that the acts of the 2nd and 3rd Defendants who applied for and got consultancy contract

with 5th Defendant from PINE, and Ad-Hoc Unit in the Office of the 1st Defendant amounted to acts of instigating the 1stDefendant to act upon and approve 5th Defendant's application. Court is referred to Exhibit 12 1 – 5 and the case of EMMANUEL EZEVs THE STATE (2018) LPELR – 44967 (SC). Court is urged to dismiss the No-Case-Submission made by the 2nd, 3rd and 5th Defendants to Count 4 and order them to enter their defence as the prosecution has established a prima facie case against them.

With regards to Count 9 and 10, it is the submission of learned prosecution's counsel that the conduct and acts of the 2nd, 3rd, 4th, 5th and 6th Defendants abetted the approval by the 1st Defendant of the main contract allegedly awarded to 6th Defendant that was executed by the 5th Defendant.

The bidding for the main contract by the 2nd and 3rd Defendants amounted to acts of instigation of the 1st Defendant to act upon and approve the report of the MTB when he knew the alleged bid by 6th Defendant was done by officials of the 5th Defendant. Court is referred to Exhibit 12 1 – 5 and the case of KAZAVs STATE (Supra) Pg 58, Paras D – E.

It is the contention of the prosecution that the 5th Defendant that was consultant to PINE disguised itselfand executed the main contract as if it were the 6th Defendant without any real supervision by a consultant as it should be. Court is urged to call upon the Defendant to enter their defence and dismiss the No-Case-Submission.

With respect to the Preliminary issue raised on Count 1, it is the submission that the name of the offence created in Section 12 is shown in the

marginal note as "fraudulent acquisition of property", which indeed is the name of the offence used in Count 1 of the charge as provided for in Section 194 (2) (a) of ACJA. Therefore, the argument that no such offence was created in Section 12 should be discountenanced.

In any event, assuming but without conceding that the name of the offence used in Count 1 is wrong, the 1st, 2nd, 3rd and 5th Defendants were never misled as they all pleaded not guilty to all the count of the charge in which they are involved. It is submitted that unless they have been misled, such error in stating the name of the offence will have no effect on the charge. See OGBOMORVs STATE (1985) LPELR – 2286 (SC) at 19 Paras A – F and also Section 195 and 200 ACJA.

It is submitted that in a charge of conspiracy, once the nature of the conspiracy is known by stating the name of the offence as the prosecution has done in Count 1 and 6, the count becomes perfect and good even without further particulars. See AIGBE&ANORVs STATE (1976) LPELR – 265 (SC). Court is urged to discountenance the Preliminary issue raised by the 2nd Defendant's counsel with respect to Count 1.

With respect to Count 1, it is submitted that the evidence of PW2, PW4, PW5, PW8, PW10 and PW11 all pointed to the fact that the 1st Defendant was the SGF at all material times between 14/1/2016 and 22/8/2016 when contracts to the 5th and 6th Defendants were awarded by PINE in phases 1 and 2.

It is submitted that where there is no direct evidence of an Agreement among the Defendants, as in the instant case, conspiracy can be inferred

from the acts of the Defendants. See AYODEJIVsFRN (2018) LPELR – 45839 (CA) Page 24 – 29, Paras F – D; IBOJIVs STATE (2016) LPELR – 40007 (SC).

It is submitted that the prosecution has established a prima facie case that the office of conspiracy has been committed and court is urged to so hold and order the Defendants to enter their defence accordingly.

With respect to Count 6, learned counsel for the prosecution adopted his argument with respect to Count 7 and 8 and urged the court to hold that the prosecution has established a prima facie case against the Defendants and order them to enter their defence and dismiss the No-Case-Submission filed by the Defendant.

The 1st Defendant's counsel filed a 10-pages Reply on Point of Law to the Written Address of the prosecution wherein counsel submitted that the prosecution counsel distorted facts and evidence in paragraphs 3.0; 5.31 of the prosecution's Written Address. Court is referred to the case of OBIDIKEVs STATE (2014) 10 NWLR PT 1414, 53 at 8 Para F. Court is urged to place reliance on the court record.

In the case of FRNVsSHULUWA (Supra) relied by the prosecution, there was evidence before the court that the Defendant was a signatory to the company's bank account at the time of the offence to ground private interest. It is not the case of the prosecution that the 1st Defendant is signatory to any of the accounts of the 5th or 6th Defendants.

It is submitted that in the cases raised upon by the prosecution, the court identified that there was evidence that the Defendants were public officers.

In the instant case there is no evidence that the 1st Defendant was a public officer. All the prosecution witnesses have to say was that the 1st Defendant is the Secretary to the Government of the Federation. The prosecution did not prove any instrument to prove the appointment of the 1st Defendant as a Public Officer.

It is further submitted that the prosecution has placed heavy reliance on the extra-judicial statements of the Defendants as proof of the ingredients of the officers in the charge. The law is that Extra-Judicial Statement does not amount to proof of facts in a case. See KASAVs STATE (1994) 5 NWLR PT 344 at 287 Para A.Further, that Court should not rely on Extra-Judicial Statement when considering a No-Case-Submission. Referred to Exhibits 11[1 -5]; Exhibits 12[1-5]; Exhibit 15 [1-11], Exhibits 16[1-18] and Exhibits 17[1-7] tendered. Also to the case of of Mumuni&OrVs State (1975) 6 SC,66089 Para 10 - 15,

SuberuVs State (2010) 8 NWLR (PT.1197) 586 @ 603 Para C-E

The 2nd Defendant's counsel also filed a 20-pages Reply on Points of law dated 21/9/2022 wherein learned senor counsel submitted that the offence of abetment is not proved or established on conjectural theories and suppositions, but on direct, positive acts traceableto a Defendant to a charge, that he in fact, instigated or abetted the commission of the alleged offences and that the offence was actually committed. See BALOGUNVsFRN (2015) LPELR – 24742 (CA) (PP 47 – 50 Paras A – A).

It is submitted that to establish a prima facie case of abetment against the 2nd Defendant in counts 4, 9 and 10 of the charge, the prosecution is

undera duty to demonstrate that the 2nd Defendant gingered, propelled or provided the award of consultancy contract to the 5th Defendant, and or gingered, propelled or provided to 1st Defendant to knowingly hold indirect private interest in the contracts awarded to the 6th Defendant charged in Count 9 and 10.

Contrary to the prosecution's submission in its Written Address, there is nothing in the entire gamut of evidence led by the prosecution before the Honourable Court that showed that the 2nd Defendant proved the 1st Defendant in any other person by possession or stirred up or gingered anybody especially the MTB responsible for awarding contracts at PINE to award the consultancy contract to the 5th Defendant.

It is the submission that the Extra-Judicial Statement of the 3rd Defendant, Exhibits 15^{1-11} relied on by the prosecution to impute criminal liability on the 2nd Defendant, does not bind the other Co-Defendants especially the 2nd Defendant as proof that the 2nd Defendant admits or acknowledges what was stated thereinby the Co-Defendant who authored the said Exhibits 15^{1-11}. See Section 29(4) Evidence Act and the case of OWOLABIVs STATE (2019) 2 NWLR (PT 1657) 525 at 534 –535 Paras E – A. Court is urged to uphold the No-Case-Submission and dismiss the charge.

The 3rd Defendant's counsel filed a Reply on Points of Law dated 20/9/2022 wherein counsel submitted that the cases cited by the prosecution's counsel in his written address are distinguishable and are not applicable to the allegations of conspiracy on Count 1 and 6 and Abetment on Counts 4,

9 and 10 against the 3rd Defendant.See case of ANANABACHUKA&ORSVs THE STATE NO. 2 (1988) LPELR – 2362 (CA).

It is further submitted that the attempt by the prosecution's counsel to try to fill in the yawing void in the evidence adduced by the complainant against the 3rd Defendant all in a bid to establish a prima facie case is doomed ab-initio as the Written Address cannot take the place of evidence. See case of CHIEF VERO SMOOLTVs CHIEF TUNDESMOOLT (2015) LPELR – 25732 (CA) PP 21 – 22 Para A.

It is the contention that the prosecution has not established a prima facie case against the 3rd Defendant. Court is urged to disregard the prosecution's Written Address.

The 4th and 6th Defendants counsel filed a Reply on Point of Law dated 21/9/2022 wherein counsel submitted that the entirety of the prosecution's submissions in fact exonerates the 4th and 6th Defendants and further shows there is no case to answer.

It is further submitted that there is no evidence adduced by the prosecution in proof of the 4th and 6th Defendants participation in conspiracy, aiding or abetting the alleged fraudulent acquisition of assets by the 1st Defendant.

The court's attention is drawn to the direct contradictions between the testimonies of PW1 – PW 11 and Exhibits 16^{1-8} which the prosecution used as the strength of his argument in its address. It is inconsistent and cannot sustain a conviction. See case of EGBOGHONOMEVs THE STATE

(1993) LPELR – 1037 (SC) 1. Court is urged to uphold the No-Case-Submission and discharge the 4th and 6th Defendants accordingly.

The 5th Defendant's counsel also filed a 6-pages Written Address on points of law dated 20/9/2022 wherein Learned Senior Counsel submitted that the submissions made by the prosecution in its address do not assist the case of the complainant regarding the issue of whether the 1st Defendant is a public officer in the public service of the Federation. Court is referred to Section 2 of the CPAOROA, 2000) and Section 358 (1) of the Constitution of Federal Republic of Nigeria 1999 (As Amended). That Section 2 of the CPAOROA is in conflict with Section 318(1) of the CFRN 1999 and therefore the provision of the Constitution should prevail. Court is urged to hold that the 1st Defendant (SGF) is not a person envisaged to be a public officer in the public service of the Federation and cannot be tried under section 12 of CPAOROA, 2000.

On the part of the court after a careful consideration of the evidence adduced and submissions of learned counsel on all sides, I am of the firm view that the singular issue that calls for determination is thus:

> **"Whether from the evidence adduced at trial, a prima facie case has not been made out by the prosecution against the 1st, 2nd, 3rd, 4th, 5th and 6th Defendants requiring them to enter their respective defences.**

Before delving into this issue, it is instructive to state here that the prosecution counsel in paragraph 5.3 of his Written Address threw in the

towel with respect to Count 3 and 5 in the Charge Sheet and urged the court to strike out the said counts.

I have carefully considered the said paragraph 5.3 of the prosecution's written address dated 9/9/2022 and come to the humble view that the prosecution have failed to establish a prima facie case against the 1st and 2nd Defendants to warrant this court to call them to enter their defence; accordingly the 1st and 2nd Defendants Engineer Babachir David Lawal and Hamidu David Lawal are hereby discharged and acquitted on Counts 3 and 5 respectively.

It is worthy of note that the Learned Senior Counsel for the 2nd Defendant S.I. Ameh SAN raised a Preliminary Point in paragraph 2.14 of his Written Address dated 25/8/2022 to the effect that Count 1 is fundamentally defective for being vague and ambiguous.

For want of doubt the said Count 1 is reproduced as follows:

COUNT 1

That you Engineer Babachir David Lawal while being the Secretary to the Government of the Federation (SGF) and a Director of Rholavision Engineering Limited, Hamidu David Lawal being a Director of Rholavision Engineering Limited, SulaimanAbubakar being a staff of Rholavision Engineering Limited and Rholavision Engineering Limited on or about the 7th of March, 2015 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory did conspire to commit an offence to wit: fraudulent acquisition of property and thereby committed an offence

contrary to Section 26(1) (c) of the Corrupt Practices and Other Related Offences Act, 2000 and punishable under Section 12 of the same Act.

A cursory perusal of the above count shows that there is no clear description of the property allegedly acquired. Conspiratorially, whether movable or unmovable, real or chose in action etc. to enable the Defendants therein fully appreciate the ambit of the charge against them.

It is not in doubt that Section 2 of the Corrupt Practices and Other Related Offences Act, 2000 defines property to mean real or personal property of every description, including money, whether situated in Nigeria or elsewhere, whether tangible or intangible, and includes interest in any such real or personal property.

Going by the above definition of property, the prosecution is under a duty to specifically describe and identify the property alleged to have been fraudulently acquired through conspiracy with accurate particularization to enable the Defendants therein understand the extent of the charge against them. This is in line with the Provision of Section 201 (1) ACJA which provides thus:

> **"The description of property of a charge shall be in ordinary language indicating with reasonable clearness, the property referred to"**

The Apex court had this to say in ABACHAVs STATE (2002) 11 NWLR (PT 779) 437 at 498 Paras G – H.

"Every charge on an indictment must be clear, so that the person to be tried will understand the complaint against him",

Also in FRNVsUSMAN&ANOR (2012) 3 SC (PTs) 128 at 145 Para 25, the Supreme Court held that:

"The purpose of the charge is to give good notice to the defence of the case he is up against".

Without prejudice to the above, under Count 1 the prosecution has a legal duty to establish the following ingredients by positive evidence:

(1) Agreement to do an unlawful at;

(2) Agreement to do a lawful act by an unlawful means.

See case of HON. ADEYEMISABITIKUFORIJIVsFRN (2018) LPELR – 43884 (SC).

In the case of TAOFEEKADELEKEVs THE STATE (2013) LPELR – 20971 (SC) PP 38 – 39 Para G – A. ARIWOOLAJSC (as then was) defined conspiracy thus:

"Conspiracy generally is an agreement by two or more persons to commit an unlawful act, coupled with an intent to achieve the Agreement's objective".

It is clear that going by the evidence of PW1 –PW 11, I find it difficult to come to terms that the prosecution has established the case of conspiracy against the Defendants therein in Count 1. There is no evidence that the Defendants abetted or conspired to fraudulently acquire property as alleged.

In fact it is the evidence of the witnesses that due process was followed in the award of the contracts.

In fact under cross-examination by the Defence counsel, the PW2 stated that the Defendants herein were not members of PINE neither were they members of the Ministerial Tenders Board nor the Procurement Unit.

The testimonies of PW2, PW4, PW5, PW6, PW8, PW9, PW10 and PW 11 who were either members of the Procurement Department of the PINE or members of the Ministerial Tenders Board (MTB), at the time of offences were allegedly committed, or EFCC investigators who investigated the allegations against the Defendants, did not prove any form of agreement of common intention, between the 1st Defendant and others to fraudulently acquire property or to acquire private interest in the award of contract to the 6th Defendant herein, I so hold.

It is instructive to point out here that under cross-examination of PW2 he admitted that the activities of PINE werestrictly executed in accordance with the relevant rules and regulations. When asked by the 2nd Defendant's counsel under cross-examination to confirm that he (PW2) diligently discharged his duties without any fear or favour, the PW2 stated as follows:

> **"Government account is guided by Rules and Financial Regulation, Public Service Rules and extant circulars. Therefore need no fear and favour"**

The PW2 further stated that the contract passesthrough the normal procedures and that PINE does not have any contractual relationship with

the 3rd Defendant and neither has it any complain against the 5th Defendant.

Under cross-examination of PW4 who was the Secretary to PINE Ministerial Tenders Board, he stated that his office complied faithfully with the procedure for approval of emergency contracts without inducement from anybody. PW4 also testified that the 1stDefendant was never a member of the MTB, neither were the 2nd and 3rd Defendants staff of the SGF's office. He reiterated that proper procurement procedure was followed in the award of contracts to the 6th Defendant and that apart from the 5th and 6th Defendants, more than 16 other companies benefitted from the emergency procurement by PINE.

It is clear from the generality of the testimonies of the prosecution witnesses that the prosecution has failed to establish any prima facie case of conspiracy against the Defendants as in Counts 1 and 6 of the charge. There is nothing in the entire gamut of the prosecution witness's testimonies that shows that the Defendants therein acted in agreement or consent with each other to acquire any property or to acquire interest in the 6th Defendant herein.

The law is trite that where the record does not record evidence of any agreement on the part of the alleged conspiracy, the charge is not made out. See case of ISIALAVs THE STATE (1970) 20 SC 63 at PP 76 – 77.

Accordingly I hold the humble view that the prosecution have not made out a prima facie case of conspiracy against the Defendants therein with respect to Counts 1 and 6 of the charge, more so, to add salt to injury I

have earlier stated in the ruling that the way and manner Count 1 was drafted left everyone in doubt as to what the Defendants therein is actually charged, with respect to what kind or type of property the Defendants therein were alleged to have conspired to acquire to enable them appreciate what they are expected to meet and defend in court.

In the light of the above, I am of the firm view that the No-Case-Submission with respect to Count 1 and 6 are hereby uphold, that the Defendants therein Engineer Babachir David Lawal, Hamidu David Lawal, SulaimanAbubakar, Apeh John Monday; Rholavision Engineering Limited and Josmon Technologies Limited are hereby discharged and acquitted of Counts 1 and 6 of the charge.

Now with respect to Counts 2, 4, 7, 8, 9 and 10 of the charge, the Defendants therein are charged with the offence of abetment and knowingly holding indirect interests in contracts awarded to the 5th and 6th Defendants contrary to and punishable under Section 26 (1) (c) and 12 of the Corrupt Practices and Other Related Offences Act, 2000.

It is the contention of the Defendants counsel that on Counts 2, 4, 7, 8, 9 and 10 of the charge against the Defendants therein, the prosecution must establish a prima facie case against the Defendants which from totality of evidence before this court, the prosecution have failed to establish. In KAZAVs STATE (2008) LPELR1683 (SC) PP 57 Para B. Abetment was clearly defined by the court as:

> **"Abetment is an act of encouraging, inciting or aiding another. The verb variant "abet" means to encourage, incite**

or set another on to commit a crime. An abettor is an instigator, or setter on; one who promotes or procures a crime to be committed"

From the above, the burden which the prosecution must discharge before the Defendants can be properly invited to enter a defence is in two fold; firstly, the prosecution must prove essential elements of the crime and show that it was committed and secondly discharge the burden in such a manner as to leave beyond reasonable doubt in the mind of a reasonable person that the Defendant therein committed the offence by the encouragement, incitement, setting on, instigation, promotion or procurement of the contract by the very act of abetment.

From the avalanche of evidence adduced, I hold it difficult to come to terms that the Defendants directly or unequivocally encouraged, incited, set on, instigated, promoted or procured anyone for the award of the contract in question.

It must be pointed out that the offence of abetment cannot rest on the mere suspicion of the investigator or prosecution but on hard core facts which the prosecution must establish that one was the abettor and the other committed the crime abetted.

The prosecution witnesses particularly the PW4 and PW5 admitted under oath that the award of the contracts was done in accordance to laws and regulations and further admitted that the two (2) contracts were executed accordingly.

For want of doubt, the PW2 admitted that they sent a monitoring team from PINE to go to the site and confirm the Valuation Certificate before payment was made to the 6th Defendant. PW2 further confirmed that the award of contracts to the 6th Defendant went through the normal due process or procurement which Certificate of no Objection was issued by Bureau for Public Procurement before the contract was awarded to the concerned Defendants.

The PW5 further stated that he was not under any pressure whatsoever by anybody during the award of contracts in question.

The PW7 admitted that there is no criminal activity with the transaction between the 5th Defendant and the 6th Defendants. This witness also stated that the 1st Defendant ceased to be a signatory to the account of the 5th Defendant in October 2015 from the company Board Resolution dated 26/10/2015.

Upon further cross-examination of PW7, he admitted that he did not prepare the documents of identifications accompanying the accounts statement before the court and nowhere does his name appear on the said Exhibit; neither was there any name (officer of the bank), signature or date on the bank certification stamp on the purported bank statement. He also stated he never at any time manage the said accounts.

It is trite law that a document is said to amount to a documentary hearsay; when the person who purports to have made/or signed the document is not the one tendering it in court and consequently cannot vouch for the authenticity of the contents of the document as it did not come from his

personal knowledge. See case of BRAIYEMAKUVs THE STATE (2021) LPELR – 56324 (CA).

In the light of the above, I hold the firm view that the evidence of PW7 with respect to the statement of account he tendered is a hearsay evidence and therefore inadmissible in law.

As earlier stated in this Ruling there is no evidence that the Defendants herein were staff of PINE, neither were they member of MTB or the Procurement Unit of PINE, which plays vital roles in the award of contract awarded to contractors. Rather, prosecution witnesses admitted under the fire of cross-examination that the Defendants herein were not member of PINE, OSGF or the MTB and that the contracts awarded to the 5th and 6th Defendants followed due process and were awarded without fear or favour or inducement from anyone. The prosecution witnesses testified that the MTB had extensive deliberations and consideration before approving any contract.

It is not difficult to come to terms that these testimonies establish one obvious fact – that the Defendants did not abet the award of contracts to anybody, especially the 6th Defendant whom the 1st and 2nd Defendants are accused of abetting the award of contract to.

In the light of the above, I hold the considered view that there is no iota of positive evidence that the alleged contracts said to be awarded to the 5th and 6th Defendants was a criminal act or awarded illegally. No prosecution witness alluded to that fact. On the contrary the prosecution witnesses chorused that the alleged contracts followed due process and the law. And

none of the Defendants abetted anyone in the award of the contracts in issue.

It is the law that if there are two routes to the truth searching or truth finding process and one of the routes is shorter than the other, a trial court is well advised to follow the shorter route, if it will result in doing the same justice to the parties, as the loner route. The administration of justice will be enhanced and that is good for society and the public. See case of OKPOKPOVsUKO (1997) 11 NWLR (PT 527) 94 (CA).

In the light of the above, calling on the Defendants to enter into their defence will result to a longer route as same result will be reached. In taking the shorter route I am of the considered view that the prosecution has failed to establish a prima facie case against the Defendant with respect to Count 2, 4, 7, 8, 9 and 10 of the Charge based on the avalanche of evidence adduced before this court. Accordingly the Defendants Engineer Babachir David Lawal, Hamidu David Lawal, SulaimanAbubakar, Rholavision Engineering Limited, Apeh Monday John and Josmon Technologies Limited are hereby discharged and acquitted of Counts 2, 4, 7, 8, 9 and 10 of the charges against them.

In the sum the Defendants are all discharged and acquitted of all counts in the Charge Sheet.

Signed
HON. JUSTICE O.C. AGBAZA
(PRESIDING JUDGE)
18/11/2022

APPEARANCE:

OFEM I. UKETESQFOR THE PROSECUTION

CHIEF AKIN OLUJINMI (SAN) WITH HIM OLUMIDEOLUJINMIESQ WITHABDULWAHABABAYOMIESQ, OGUNJOBIROTIMIESQ, GBOLAGADEAJAOESQ FOR THE 1ST DEFENDANT.

S.I. AMEH (SAN)JOHN ITODOESQ, R.O.MOHAMMED ESQ, ALICE ORJI, A.K. T.OFALAYEESQ, A.K. TITILAYOESQ; CHIDERA OBI ESQ; MUNRAITADAMAESQ FOR THE 2ND DEFENDANT.

NAPEOLON O. IDANELEESQ FOR 3RD DEFENDANT.

OCHOLI O. OKPUTEPAESQ WITH HIM TITUS M. SANCHIESQ; HELEN JOHN APERESQ FOR 4TH /6TH DEFENDANT

M.E. ORU (SAN) WITH FRANCIS A. EYOESQ; J.O. UZOESQ; OGBENYEALUEGELAMBAESQACHILE MOSES ESQ, OLUMIDEADARAMOLAESQ, FRANCIS EYOESQ FOR THE 5TH DEFENDANT.

COURT

All Counsel appreciates the court's Ruling on this case.